

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SJC No. DAR-_____

AC No. 2018-P-0435

COMMONWEALTH OF MASSACHUSETTS,
Respondent,

v.

JONATHAN BROWN,
Petitioner

Application for Direct Appellate Review

On Appeal From the Denial of a Motion to Dismiss
by the Honorable Cathleen Campbell and
the Judgment Following a Jury Trial
Before the Honorable Michael A. Patten,
Lynn District Court No. 1213CR3013

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Dated: March 30, 2018

REQUEST FOR DIRECT APPELLATE REVIEW

Petitioner Jonathan Brown was convicted under G.L. c. 272, § 7 (the "pimping statute"). He seeks direct appellate review for two reasons.

First, Brown was denied his due process right to present a meaningful defense when the trial court refused his request for a jury instruction consistent with Commonwealth v. Thetonia, 27 Mass. App. Ct. 783 (1989). To ensure fair notice, Thetonia construed the pimping statute to be "directed against pimping," which the court defined as procuring customers for prostitution, notwithstanding its "literal language" punishing all financial relationships with a prostitute. Id. at 785-786. Brown's defense at trial was that the Commonwealth failed to prove he engaged in pimping. The trial court's charge to the jury -- based on a model instruction that predated Thetonia and made no mention of pimping -- made it impossible for the jury to consider and give effect to Brown's chosen defense.

If Thetonia did not require the trial court to give the requested instruction, the pimping statute is facially unconstitutional. As Brown argued in a pretrial motion to dismiss, without judicial construction the law is unduly vague and fails to give fair notice of the

proscribed conduct, and the motion judge erred in denying that claim.

Second, the motion judge erred in denying a second claim in Brown's pretrial motion to dismiss that the pimping statute is facially unconstitutional because it lacks an essential mens rea element. While the express language of the pimping statute requires proof that a defendant received "support" or "maintenance" from or "shared in the earnings" of a person known to be a prostitute, it does not require proof that the defendant knew such support, maintenance or shared earnings was the proceeds of prostitution. Because the statute does not require a "blameworthy condition of the mind," it creates a strict liability offense that offends due process. That such an element must be implied in the pimping statute is suggested by a recent decision, Commonwealth v. McGhee, 472 Mass. 405, 417 (2015).

STATEMENT OF PRIOR PROCEEDINGS¹

On June 12, 2012, Brown was arrested and subsequently charged with trafficking of a person for sexual servitude in violation of G.L. c. 265, § 50(a) (Count 1) and deriving support from prostitution in

¹ A certified copy of the docket in the lower court is appended at Exhibit A.

violation of G.L. c. 272, § 7 (Count 2). Count 1 was dismissed on November 19, 2012. On January 13, 2014, after a jury trial in Lynn District Court (Conlon, J., presiding), Brown was found guilty of Count 2 and sentenced to two years in the Essex County House of Correction.

On September 30, 2017, Brown's conviction was reversed by the Appeals Court and the case was remanded to Lynn District Court for further proceedings.² Commonwealth v. Brown, 90 Mass. App. Ct. 1107, No. 14-P-968, slip op. (Sept. 30, 2017).

On remand, Brown filed a pretrial motion to dismiss arguing the pimping statute is facially unconstitutional. That motion was denied by the motion judge (Campbell, J.) on August 31, 2017. On December 5, 2017, Count 1 was nolle prossed and Brown was retried by a jury on Count 2. (Patten, J., presiding.) He was found guilty and sentenced to two years, with credit for time served.

Brown timely filed a notice of appeal from his conviction and sentence. On March 27, 2018, his appeal

² Brown had sought direct appellate review, but his claims were not preserved in the lower court.

was docketed in the Appeals Court, where it is currently pending.

SHORT STATEMENT OF FACTS RELEVANT TO APPEAL

On the evening of June 21, 2012, several area law enforcement agencies ran a prostitution sting operation at the Holiday Inn on Route 1 in Saugus. (Tr.³ at 56-57, 61.) At around 9 or 10 p.m., a surveillance team posted near the front door of the hotel observed a black car drive into the lot and behind the building. (Tr. at 59, 62, 64-65.) The team observed two females appear from behind the building and walk into the front door of the hotel. (Tr. at 65.)

Inside the hotel, another surveillance team was remotely monitoring a room occupied by an undercover officer. (Tr. at 88.) They observed two females enter the undercover officer's room. (Tr. at 89-90.) One of the females, elsewhere identified as Amanda Beers, had a discussion with the undercover officer and agreed to have "sex doggie style" for \$250. (Tr. at 14, 98.) The officer "exchanged money to the female." (Tr. at 97-98.) He then took a phone call and told Beers and her companion they had to leave. (Tr. at 98.)

³ "Tr." refers to the transcript of Brown's December 5, 2017, trial.

The surveillance team posted near the front parking door observed the two females leave the hotel and walk to the back of the building. (Tr. at 66.) The team then observed the black car drive into the front parking lot and onto Route 1. (Tr. at 67.)

A "takedown" team stopped the car with its four occupants. (Tr. at 73, 75, 76.) Detective John Oliveira ("Detective Oliveira"), a team member, approached the car and asked a male he identified as Brown to step out. (Tr. at 73, 76, 78.) On direct examination he described Brown as the "operator." (Tr. at 76.) On cross-examination, after he was shown his testimony from a 2013 motion hearing, he stated that Brown was "either in the front seat or the passenger seat." (Tr. at 84.) He pat-frisked Brown and found "approximately \$250" in his sneaker. (Tr. at 78.) The serial number of the bills removed from Brown's sneaker matched a list of serial numbers for the bills used by the undercover officer. (Tr. at 78-80.)

STATEMENT OF ISSUES OF LAW

This application raises two questions: (1) whether due process entitles a defendant to have his jury instructed that the Commonwealth must prove, not just the explicit elements of the pimping statute, but that

he engaged in pimping; and (2) whether the pimping statute is facially unconstitutional because it lacks the mens rea element that is required by due process for serious criminal offenses absent clear legislative intent to the contrary.⁴

ARGUMENT

I. BROWN WAS DENIED HIS DUE PROCESS RIGHT TO PRESENT A MEANINGFUL DEFENSE WHEN THE TRIAL COURT REFUSED TO INSTRUCT THE JURY IN ACCORDANCE WITH THETONIA; IF SUCH AN INSTRUCTION WAS NOT REQUIRED, THE PIMPING STATUTE IS FACIALLY UNCONSTITUTIONAL.

Brown was denied his right to present a meaningful defense as guaranteed by the federal and state constitutions because the trial court refused to instruct the jury consistent with Thetonia as requested by trial counsel. If the instruction was not required, the pimping statute is facially unconstitutional.

A. Due Process Entitled Brown to an Instruction That the Commonwealth Had to Prove He Was Engaged in Pimping, Particularly Where That Was His Defense at Trial.

Due process guarantees a defendant a right to present a meaningful defense. California v. Trombetta, 467 U.S. 479, 485 (1984). Under Massachusetts law, the

⁴ While these particular questions merit direct appellate review under Mass. R. A. P. 11, undersigned counsel anticipates that other issues will be presented in the appeal.

failure to give a requested jury instruction is reversible error when it: (1) "concerns an important point in the trial so that the failure to give it seriously impaired the defendant's ability to effectively present a given defense;" (2) "was not substantially covered in the charge given to the jury;" and (3) is "substantially correct." Commonwealth v. DeGennaro, 84 Mass. App. Ct. 420, 431 (2013) (citation and emphasis omitted).

1. The Trial Court's Refusal to Give the Requested Instruction Seriously Impaired Brown's Ability to Present His Defense.

At trial, Brown's entire defense was based on Thetonia, where the court held that the pimping statute was directed, not at any acceptance of money from a prostitute, but at pimping, defined as procuring customers for a prostitute. 27 Mass. App. Ct. at 785-786 & n.4. Brown requested a jury instruction based on Thetonia, but the trial court denied that request, stating, "If the SJC wants to use this as a test case, that's fine, but so far, [Thetonia]'s not binding."⁵ (Tr. at 104.) Instead, the trial court instructed the jury

⁵ At the start of trial, trial counsel requested and received permission to refer to "pimping," although the trial court reserved on his request for a jury instruction on pimping. (Tr. at 13-14.)

that the Commonwealth had to prove just three elements: Beers was engaged in prostitution, Brown knew she was engaged in prostitution, and he shared in the proceeds of her prostitution. (Tr. at 119-120.)

Without the requested instruction, the jury had no way to consider and give effect to Brown's defense. The lack of evidence of pimping was not just a passing argument, but guided his entire trial strategy. Trial counsel referred to it in his opening statement (Tr. at 53), cross-examined a police detective about the typical activities of "men who arrange those prostitution deals" (Tr. at 69-70), and argued in summation:

Jonathan Brown was not a pimp. Jonathan Brown was merely holding the money. That does not make him a pimp. There's no evidence before you that Jonathan Brown went into the room with this woman. There's no evidence that he was providing security. There's no evidence that he was making dates. There's no evidence that he was on the other side of the computer on the website that they looked on. There's no evidence that he was there to rough anybody up if they didn't pay. There's no evidence that he was armed. And there's no evidence that he was -- that he recruited this young woman to become involved.

(Tr. at 106.)

Without a Thetonia instruction, however, the jury had no way to consider or give effect to that defense, since the jury charge made no mention of pimping. The

jury's confusion at this inconsistency is evident from its request during deliberations to be reinstructed on the "[a]ctual definition of the charge. Three conditions to reach a guilty verdict." (Tr. at 125.) After the trial court repeated its initial instruction, the jury returned a guilty verdict.

The jury could not resolve whether the Commonwealth proved Brown had engaged in pimping without guidance from the trial court. "The omission of any instruction on the trial's only disputed issue tended 'to submerge one of the crucial issues in the case, if not to rob the defendant of his defense entirely.'" Commonwealth v. Williams, 54 Mass. App. Ct. 236, 244 (2002) (citation omitted).

2. The Requested Instruction Was Not Covered in Any Part of the Trial Court's Charge, Which Was Based on a Model Instruction That Predated Thetonia.

The charge, based on the Criminal Model Jury Instructions for Use in the District Court 7.140 (2009), merely repeated the pimping statute's "literal language" (Tr. at 104, 119-120), which Thetonia had found inadequate to ensure due process. That model instruction was last revised in 1988 and therefore predated the 1989 Thetonia decision. See Criminal Model Jury Instructions

for Use in the District Court 5.58 (1988). Nothing else in the trial court's charge addressed any of the issues raised in defense's proposed instruction.

3. The Requested Instruction Closely Tracked Thetonia and Therefore Was Substantially Correct.

Brown's requested instruction was intended to remedy what Thetonia identified as the inadequacy of the pimping statute' "literal language." He proposed language identical to the model instruction except for three modifications that closely tracked Thetonia.⁶ See 27 Mass. App. Ct. at 785-786 & n.4 (G.L. c. 272, § 7, applies to activities of a "pimp," defined as "[o]ne who obtains customers ('tricks') for a whore or prostitute;" does not prohibit furnishing transportation and waiting in exchange for gas money or drugs; and is referred to as "the pimping statute").

The heart of the proposed instruction was that "[t]he Commonwealth must prove beyond a reasonable doubt that the Defendant played a substantial role in facilitating this person's prostitution." Not only was this language consistent with Thetonia, but it reflected the reality that convictions under the pimping statute

⁶ For the Court's convenience, the proposed instruction is appended at Exhibit B.

are based on evidence that the defendant played an active role in promoting prostitution.⁷

B. If the Trial Court Was Not Required to Give the Requested Instruction, the Pimping Statute Is Facially Unconstitutional Because It Is Unduly Vague and Fails to Give Fair Notice of the Proscribed Conduct.

The trial court erred in concluding that Thetonia was “not binding.” Thetonia is a published decision, see Horner v. Boston Edison Co., 45 Mass. App. Ct. 139, 141 (1998) (published decisions express opinion of entire court and are binding), and has been cited in other decisions as authority on this issue. See Matos at 583 n.6; Halstrom at 382. Moreover, Thetonia undoubtedly is a judicial construction of the pimping statute, since the court could not have concluded that the evidence was insufficient unless it found pimping to be an implicit element of the law.

However, if this Court agrees with the trial court that the instruction was not required, Brown is still entitled to relief because, absent judicial

⁷See Commonwealth v. Dabney, 478 Mass. 839, 841-843 (2018); McGhee, 472 Mass. at 408-412; Commonwealth v. Purdy, 459 Mass. 442, 444-447 (2011); Commonwealth v. Halstrom, 84 Mass. App. Ct. 372, 382 (2013); Commonwealth v. Matos, 78 Mass. App. Ct. 578, 581 (2011); Commonwealth v. Wright, 11 Mass. App. Ct. 276, 277-278 (1981).

construction, the pimping statute is unduly vague and fails to give fair notice of the prohibited conduct.

Thetonia correctly explains the due process dilemma in the absence of proper judicial construction: “[I]f [the pimping statute] were construed to cover any financial benefit, ... questions of due process might be implicated: the statute may ‘fail[] to provide a reasonable opportunity for a person of ordinary intelligence to know what is prohibited’” 27 Mass. App. Ct. at 786 (citation omitted, emphasis added).

Brown raised this exact claim in his pretrial motion to dismiss. If Thetonia did not remedy the due process flaw, the motion judge erred in denying that motion,⁸ and Brown is entitled to judgment in his favor.

II. THE MOTION JUDGE ERRED IN DENYING BROWN’S PRETRIAL MOTION TO DISMISS BECAUSE HE WAS CHARGED WITH VIOLATING A FACIALLY UNCONSTITUTIONAL STATUTE THAT DOES NOT REQUIRE PROOF OF ANY BLAMEWORTHY KNOWLEDGE AND THEREFORE LACKS AN ESSENTIAL MENS REA ELEMENT.

The motion judge also erred in denying Brown’s motion to dismiss on the ground that the pimping statute omits an essential mens rea requirement required by due process and therefore it is facially unconstitutional.

⁸ The ruling is appended at Exhibit C.

"[O]ffenses that require no mens rea generally are disfavored, ... and ... some indication of [legislative] intent, express or implied, is required to dispense with mens rea as an element of a crime." Staples v. United States, 511 U.S. 600, 606 (1994). "The idea behind the mens-rea requirement 'is that a defendant must be "blameworthy in mind" before he can be found guilty." Elonis v. United States, ___ U.S. ___, 135 S.Ct. 2001, 2009 (2015) (citation omitted); see Commonwealth v. Ober, 286 Mass. 25, 30 (1934) ("it is an essential ingredient in a criminal offense that there should be some blameworthy condition of the mind").

The pimping statute's only scienter requirement is knowledge that the person who provided support, maintenance or shared earnings was a "prostitute." G.L. c. 272, § 7. This is not mens rea, however, because a person's status as a prostitute is not illegal. See Robinson v. California, 370 U.S. 660, 667 (1962). Thus, the statute does not require "blameworthy" knowledge, but instead creates a strict liability offense.

In Commonwealth v. Buckley, 354 Mass. 508, 511 (1968), this Court warned that, while strict liability does not necessarily offend due process, "it would take unusually clear legislative language to lead us to the

view that knowledge is not required for a conviction" under a statute except "where punishment is by 'penalties commonly ... relatively small' and where 'conviction does no grave damage to an offender's reputation'" (citation omitted).

It follows from Buckley that mens rea is a necessary element of the pimping statute. It imposes a harsh felony sentence of five years in state prison, see Thetonia, 27 Mass. App. Ct. at 784 (pimping statute "sets a much more severe penalty than" for prostitution statute); Buckley, 354 Mass. at 511 (law imposing sentence of up to five years "hardly can be regarded as a minor offence"), and does "grave damage" to a defendant's reputation. See Doe v. Sex Offender Registry Bd., 466 Mass. 594 (2013) (discussing reputation of pimps as abusive). Yet there is no "unusually clear legislative language" that a crime with such harsh consequences was intended to have no mens rea requirement. Thus, the omission of the requirement is a fatal constitutional flaw.

Although no Massachusetts courts have addressed this issue, this Court's recent decision in McGhee lends support to Brown's analysis. There, in addressing a challenge to the sex trafficking statute (G.L. c. 265, § 50(a)), the Court discussed that law's interplay with

the pimping statute. In distinguishing the sex trafficking statute from the pimping statute, the Court observed:

[T]he knowledge element of [the pimping statute] is retrospective. That is to say, an individual shares earnings or proceeds knowing that they came from an act of prostitution that already has occurred.

472 Mass. at 417 (emphasis added).

McGhee's explanation of the pimping statute's knowledge element -- that the defendant must know the money he accepted came from a past act of prostitution -- is materially different from other expositions of the law, which make no mention of such a requirement. See, e.g., Commonwealth v. Purdy, 459 Mass. 442, 454 n.10 (2011) (requiring only knowledge that "the defendant knew the individual was a prostitute"). Even if McGhee's explanation is dicta, it suggests that the literal language of the pimping statute is ambiguous and does not accurately reflect the law's intent.⁹

⁹ In addition, in interpreting a nearly identical pimping law, Cal. Pen. Code, 1 § 266h(a), California's courts have long implied just such an element. See, e.g., People v. Grant, 195 Cal. App. 4th 107, 115 (2011) ("Although section 266h(a) does not expressly contain a specific element that a person deriving support have knowledge of the source of the prostitute's funds, such a requirement has been implied by the courts.").

Regardless of whether this Court invalidates the pimping statute or judicially interprets it to remedy the constitutional infirmity, having raised this issue in a pretrial motion to dismiss, Brown is entitled to judgment in his favor.

REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

This application raises two important questions regarding the pimping statute, a serious criminal offense.

First, does due process demand that a jury be instructed, not just on the literal language of the pimping statute, but on Thetonia's requirement that the Commonwealth must prove the defendant engaged in pimping, defined as the procurement of customers for a prostitute, particularly when the defense is that the defendant did not engage in pimping?

Second, does the pimping statute violate due process on its face where it does not require proof that a defendant knew, not just that he received money from a prostitute, but that the money was the proceeds of prostitution?

These questions are novel because they have not been addressed by the Massachusetts appellate courts; they implicate federal and state constitutional rights;

and they are of public interest because they affect, not just Brown, but every defendant charged with violating the pimping statute. Accordingly, this application meets all three of the grounds upon which direct appellate review may be sought. See Mass. R. A. P. 11(a)(1)-(3).

For all of these reasons, Brown requests that this Court grant direct appellate review.

Respectfully submitted,
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Dated: March 30, 2018

Exhibit A

CRIMINAL DOCKET		DOCKET NUMBER 1213CR003013		NO. OF COUNTS 2		Trial Court of Massachusetts District Court Department		
DEFENDANT NAME AND ADDRESS Jonathan E Brown 72 Woodbole Avenue Mattapan, MA 02126			DOB 10/24/1990		GENDER Male		COURT NAME & ADDRESS Lynn District Court 580 Essex Street Lynn, MA 01901	
			DATE COMPLAINT ISSUED 06/22/2012					
			PRECOMPLAINT ARREST DATE 06/21/2012					
INTERPRETER REQUIRED								
FIRST FIVE OFFENSE COUNTS								
COUNT	CODE	OFFENSE DESCRIPTION					OFFENSE DATE	
1	265/50/A	TRAFFICKING OF PERSON FOR SEXUAL SERVITUDE c265 §50(a)					06/21/2012	
2	272/7	PROSTITUTION, DERIVE SUPPORT FROM c272 §7					06/21/2012	
ORIGINAL								
DEFENSE ATTORNEY <i>Leonardo Bail only</i>			OFFENSE CITY/TOWN Saugus			POLICE DEPARTMENT Saugus PD		
DATE & JUDGE		DOCKET ENTRY			DATE & JUDGE		FEES IMPOSED	
<i>6-22-12 Flattery</i>		<input checked="" type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy			<i>6-22-12</i>		Counsel Fee (211D § 2A(12)) \$ <i>150</i> <input type="checkbox"/> WAIVED	
		Terms of release set: <input type="checkbox"/> PR <input checked="" type="checkbox"/> Bail <i>1000 cash</i> <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)					Counsel Contribution (211D § 2) \$ <input type="checkbox"/> WAIVED	
		Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10)					Default Warrant Fee (276 § 30(1)) <input type="checkbox"/> WAIVED	
							Default Warrant Arrest Fee (276 § 30(12)) <input type="checkbox"/> WAIVED	
		Advised of right to jury trial <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive					Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED Bail Order Forfeited	
		Advised of trial rights as pro se (Dist. Ct. Supp.R.4)					BAIL RECEIVED <i>7/20/12</i> # <i>66 BK21</i>	
		Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)					# <i>1000</i> RECEIVED <i>11/15/14</i>	
SCHEDULING HISTORY								
NO.	SCHEDULED DATE	EVENT	RESULT			JUDGE	TAPE START/STOP	
1	06/22/2012	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Flattery</i>	<i>11252-337</i>	
2	<i>7-19-12</i>	<i>PC</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd			<i>PWL</i>		
3	<i>8-9-12</i>	<i>PC</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd			<i>Whelan</i>	<i>2/9/35-914</i>	
4	<i>9-11-12</i>	<i>PC</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd			<i>Conlon</i>	<i>1007-191</i>	
5	<i>10-11-12</i>	<i>PC</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd			<i>Conlon</i>	<i>2-907-930</i>	
6	<i>10-29-12</i>	<i>PC</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Conlon</i>	<i>847-85</i>	
7	<i>11-19-12</i>	<i>PC</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Conlon</i>	<i>8/10/53-21</i>	
8	<i>12-13-12</i>	<i>PT</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Conlon</i>	<i>2-1113-1113</i>	
9	<i>1-17-13</i>	<i>M</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Conlon</i>	<i>2-1033-1034</i>	
10	<i>2-21-13</i>	<i>cle</i>	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			<i>Conlon</i>	<i>2926-928</i>	
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing NOT = Not clearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = Probation revocation hearing								
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK X				TOTAL NO. OF PAGES		
						CLERK MAGISTRATE		
						DISTRICT COURT OF SOUTHERN ESSEX		
						580 ESSEX STREET		
						LYNN MASSACHUSETTS 01901		



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Jonathan E Brown		DOCKET NUMBER 1213CR003013	
COUNT / OFFENSE 1 TRAFFICKING OF PERSON FOR SEXUAL SERVITUDE c265 §50(a)				DISPOSITION DATE AND JUDGE 12/5/19 J. Patten	
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input checked="" type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input checked="" type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS VW ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
				OUI VICTIMS ASMT OTHER	
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE DATE	
COUNT / OFFENSE 2 PROSTITUTION, DERIVE SUPPORT FROM c272 §7				DISPOSITION DATE AND JUDGE 12-5-17 PATTEN	
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input checked="" type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS VW ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
				OUI VICTIMS ASMT OTHER	
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE DATE	
COUNT / OFFENSE				DISPOSITION DATE AND JUDGE	
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS VW ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
				OUI VICTIMS ASMT OTHER	
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE DATE	



TRUE COPY ATTEST

JUDGE
John P. Stinson DATE
CLERK MAGISTRATE
DISTRICT COURT OF SOUTHERN ESSEX

580 ESSEX STREET
WYNN MASSACHUSETTS 01901

CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Jonathan E Brown		DOCKET NUMBER 1213CR003013	
COUNT / OFFENSE 1 TRAFFICKING OF PERSON FOR SEXUAL SERVITUDE c265 §50(a)			DISPOSITION DATE AND JUDGE 11-19-12 <i>Fonte J</i>		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS V/W ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
		OTHER			
SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE DATE	
COUNT / OFFENSE 2 PROSTITUTION, DERIVE SUPPORT FROM c272 §7			DISPOSITION DATE AND JUDGE 1-13-14 <i>Conlon</i>		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input checked="" type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS V/W ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
		OTHER			
SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE DATE	
COUNT / OFFENSE			DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS V/W ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
		OTHER			
SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:					
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COUNT / OFFENSE			DISPOSITION DATE AND JUDGE		
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT		SURFINE RESTITUTION	
		COSTS V/W ASSESSMENT		OUI §24D FEE BATTERER'S FEE	
		OTHER			
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TRUE COPY ATTEST
 JUDGE *Joe Barry Stinson* DATE _____
 CLERK MAGISTRATE
 DISTRICT COURT OF SOUTHERN ESSEX
 580 ESSEX STREET
 LYNN, MASSACHUSETTS 01901



CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Jonathan E Brown	DOCKET NUMBER 1213CR003013
DATE	DOCKET ENTRIES		
6/25/12	Copies filed to CPCS		
7/11/12	Per V's atty, bail set to \$1,000		
	and posted 7/11/12 - D was at liberty in court		
9-11-12	Per Conlon, J TBD if not indict or PC not ready next date		
1-19-12	M/S + affidavit filed in CT		
	Motion for Discovery filed in CT		
11-19-12	per ch 218 sec 26 indicates P.C. Jurisdiction given CT 2 Fnte J		
4-5-13	motion to Dismiss, Affidavit of Counsel, memorandum of law in support of defendant's motion to dismiss filed by atty K. Cox		
4/1/13	Ruling M/D held 2-200-248 under advisement		
	5-14-13 SR #2		
4/12/13	motion to dismiss amended J. Rls		
5-14-13	6/25-13 MS Fnte 2 921 - 923		
6/18/13	Motion to Suppress Evidence filed.		
6/25-13	T2-216-246 C 7-23-13 MS before J. Conlon Courtroom #3		
7-23-13	Motion to Suppress under Advisement - Fnte 3-951-952 3-1024 1153		
	C 8-29-13 SR #2		
8/23/13	Motion Denied		

APPROVED ABBREVIATIONS

ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SR = Status review
 SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant

TRUE COPY ATTEST

John B. Kelly, Jr.

CLERK OF SUPERIOR COURT
 DISTRICT COURT - SOUTHERN ESSEX

580 ESSEX STREET

LYNN, MASSACHUSETTS 01901

Version 2.0 - 11/06

Date/Time Printed: 06-22-2012 12:33:11



1213CR003013

8-29-13 Lammeth J 2/9:17-9321 C-11-5-13 JT

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME	DOCKET NUMBER
	Jonathan E Brown	1213CR003013

DATE	DOCKET ENTRIES
11-5-13	C. 1-9-14 JT J. Weleee T4 909-809
1-9-14	1-13-14 JT #3 Conlon 3-10:29-10:29
1-13-14	Conlon 3 9:16 - 9:30 3 10:19 - 400
1-13-14	all monies remitted - Ga. thy - 2 yrs Hle - Credit
1-14-14	Sentence. MATT ISS. 32 days
1.13.14	notice of appeal
1.13.14	Motion for stay of execution pending appeal
1.13.14	Motion for stay of execution pending appeal
	signed conlon J.
1.22.14	copy of notice of appeal given
	Honorable judge conlon cc to Nda Graydon
2.21.14	notice of assignment of Counsel Osborne (appeal)
2.27.14	appearance of Counsel David Osborne appeal
6-6-14	Notice of Change of address from atty Osborne
5-27-14	Transcripts & pdf received. from atty Osborne
5-30-14	ltr from Atty Osborne
6-16-14	Notice of assembly notice of the assembly of the record, appeal cover sheet letter to Clerk Stanton notice of the assembly of the record on appeal appellat Court entry Statement copy of notice of appeal and set of original documents on pdf and two true attested copies of the latest cc of notices only to atty Osborne. And to Graydon copy of transcripts provided

CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Jonathan E Brown	DOCKET NUMBER 1213CR003013
DATE	DOCKET ENTRIES		
6.16.14	Left Message for atty Osborne about refused pdf / transcript for ADA		
6.24.14	Notice of Entry 2014 - P. 968		
6.25.14	Ltr to Ellen Graydon w/ pdf.		
11.2.16	Notice of receipt judgment reversed verdict set aside		
11.2.16	Copy of notice of receipt of judgment reversed verdict set aside given to Honorable Judge Conlon copy given to Frank to Gratulation (Elaine)		
11.4.16	Scheduled Status Review for 12-5-16		
11.4.16	DA's office & Prob notified		
11.4.16	Mailed Summons to J. Brown to appear 12-5-16 - Status Review		
12.5.16	Conlon J 2/10 130-10:40 C- 1-5-17 SR #2 Presence waived		
1-5-17	SR Conlon C- 3-21-17 m/o 2/9 100-910.5		
3/16/17	Motion to Dismiss filed by Daniel Werner - CPCS; along with memorandum in support of Motion to Dismiss.		
4/16/17 MN	WARD (\$100 pre-set Bail) Amoslu 2-1130-1133 (give to Atty Werner if warrant removed)		
4.6.17	Warr iss. \$1000 pre-set (W)		
4.10.17	W/R Blue Sheet no custody Per D. Day 1/12/03-12/10 Fulginiti C 5-11-17 PT		
4/10/17	CPCS copy notify CP 25 Copies faxed to CPCS		
APPROVED ABBREVIATIONS		TRUE COPY ATTEST	
ARR = Arraignment PT = Pretrial hearing CE = Discovery compliance & jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR = Status review		CLERK MAGISTRATE	
SRP = Status review of payments FA = First appearance in jury session S = Sentencing CW = Continuance-without-finding scheduled to be tried C = Probation scheduled to terminate		DISTRICT COURT OF SOUTHERN ESSEX	
DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled		25	
		LYNN MASSACHUSETTS 01901	

CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME	DOCKET NUMBER
	Jonathan E Brown	1213CR003013

DATE	DOCKET ENTRIES
5/1/17	Cooking warrant 2-1124-1128 HR
7/19/17	Habeas corpus filed to Nashua St. Jail for 8/1/17 - att'y Wrenn must first be heard in.
8-1-17	Resale warrant. Campbell 11/2111-D116 \$1000- cash bail by agreement. C 8-25-17 MD Issue habeas/mitt @ Nashua st for 8-25-17
8/2/17.	Habeas corpus filed to Nashua St Jail for 8/25/17
8/2/17	Reasons for Only Bail Searched.
8-25-17	Motion to Dismiss - Under Advisement Campbell 2-1134-1144
	9-14-17 SR#2
8/31/17.	Motion to dismiss is denied after hearing per J. Campbell.
9-14-17	10-16-17 JT Patten 2-1113-1114
9/14/17.	Habeas corpus filed to Nashua St Jail for 10/16/17
10/10/17	Motion to advance & cont filed by DA office schedule 10/12/17
10-12-17	10-19-17 JT 3-1112-1117 Campbell 2 909-905 2 1048-1052
10/12/17	Habeas corpus filed to So Bay for 10/18/17
" "	Habeas for 10/16/17 was cancelled.
10-19-17	JT 3-1112-1117 J. Campbell C. 11-7-17 JT
10/19/17.	Habeas corpus filed to So Bay for 11/7/17
11-7-17	C 12-5-17 JT NFC II Conlon 4-1157- if it witnesses not present court will enter bench warrant
12-5-17	T-3-10:40

APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SR# = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate CLERK MAGISTRATE DFTA = Defendant failed to appear & was defaulted WAR = Warrant Issued WARD = Default warrant issued WR = Warrant or default warrant recalled DISTRICT CLERK OF SOUTHERN ESSEX.		TRUE COPY ATTEST J. Patten District Clerk of Southern Essex 580 ESSEX STREET LYNN, MASSACHUSETTS 01901 Revised: 07/16
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Exhibit B

Deriving Support from Prostitution

The defendant is charged with knowingly deriving support from the earnings of a prostitute. ***This is commonly known as the "pimping" statute.*** Chapter 7 of Section 272 of our General Laws provides as follows: "Whoever, knowing a person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of his prostitution...or shall share in such earnings or proceeds...shall be punished."

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First, that a particular person was engaged in prostitution. A prostitute is a person who engages in common, indiscriminate sexual activity for hire.

Second, The Commonwealth must prove beyond a reasonable doubt that the defendant *knew* that such person was a prostitute; and

Third, The Commonwealth must prove beyond a reasonable doubt that the defendant shared in some ***substantial*** way in the earnings or proceeds from that person's prostitution.

Fourth, The Commonwealth must prove beyond a reasonable doubt that the Defendant played a substantial role in facilitating this person's prostitution. For example, it is not enough if the Defendant simply drove the prostitute to a job.

Exhibit C

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

DISTRICT COURT DEPARTMENT
LYNN DIVISION
NO: 1213 CR 1313

12/30/13

COMMONWEALTH

v.

JONATHAN BROWN

MOTION TO DISMISS

Now comes the Defendant in the above-referenced matter and moves this Honorable Court to dismiss the above-numbered complaint. As grounds therefore, the Defendant states that the charge of Deriving Support From a Prostitute G.L. c. 272, § 7, which he is charged with, is facially unconstitutional, violating the Fourteenth Amendment to the United States Constitution and Articles 1 (as amended), 10 and 12 of the Massachusetts Declaration of Rights. It is unconstitutional because it is a serious crime that lacks a Mens Rea requirement, with no legislative intent to the contrary, and also because it is impermissibly vague, failing to give the public notice of what activity is being proscribed.

8/31/17 - The defendant's
Motion to Dismiss
is DENIED after
a hearing.

Jonathan Brown
By his attorney



Daniel Werner, 686211
Committee for Public Counsel Services
One Salem Green, Suite 403
Salem, MA 01970

See Comm v. McGhee, 472 Mass 405, 412-417 (2015). See also Comm v. Purdy, 459 Mass 442 (2011). Contrast the facts of this case with

CERTIFICATE OF SERVICE
2017 NOV 11 AM 11:02

Comm. v. Thetoua, 31 Mass App. Ct 783 (1989) OVER

See also the
Appeals Court denial pursuant
to ~~Latin~~ ^{standards of} the defendant's appeal
~~motion~~ in this case
Comm v. Brown
14-P-968 (2016)
pages 1-4. (sufficiency
of evidence/elements)

CERTIFICATE OF COMPLIANCE WITH RULE 16(k)

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, I hereby certify that this brief complies with all applicable rules of court that pertain to the filing of applications for direct appellate review, including but not limited to Mass. R. A. P. 11 (applications for direct appellate review) and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).



David M. Osborne

CERTIFICATE OF SERVICE

Pursuant to Rule 13(d) of the Massachusetts Rules of Appellate Procedure, I hereby certify under the penalties of perjury that, March 30, 2018, I caused the foregoing document to be served by e-mail to the following person:

Catherine Semel
Assistant District Attorney
Appeals Unit
Essex County District Attorney's Office
15 Commonwealth Avenue
Salem, MA 01970
Counsel for the Commonwealth



David M. Osborne